

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MONIR SHAHID,

Plaintiff,

v.

BP AMERICA, *et al.*,

Defendants.

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: CASE NO. 1:09-CV-1764
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: OPINION & ORDER
: [Resolving Doc. No. [10](#)]
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JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

The Defendant has moved for summary judgment in this personal injury action brought by Monir Shahid. [Doc. [10](#).] Plaintiff Shahid has not responded to the Defendant's motion. For the following reasons, the Court **GRANTS** the Defendant's summary judgment motion.

The Plaintiff brought this state tort action against Defendant BP Products North America Inc., and five unnamed individuals following his injury at a BP gas station in Cleveland, Ohio. In the early morning hours of July 1, 2007, Plaintiff Shahid went to the BP station to put gas in his car. [Doc. [10-2 at 3](#).] Upon arrival, the Plaintiff learned that a female employee had locked herself out of the employee-only section of the station. [*Id.*]

After speaking with the employee, the Plaintiff accompanied her to the unlocked "convenience store" area. [*Id.*] At some point, the employee asked Shahid to climb up into the station's drop ceiling on the convenience store side and shimmy over and down into the employee-

Case No. 1:09-CV-1764
Gwin, J.

only area. [*Id.*] When Shahid attempted this maneuver, however, the ceiling collapsed and he fell, injuring himself. [*Id.*]

On July 6, 2009, the Plaintiff filed a tort action against Defendant BP in the Cuyahoga County Court of Common Pleas. [Doc. [1-1](#).] The Defendant removed the case to this Court on July 29, 2009. [Doc. [1](#).] After the close of dispositive discovery, the Defendant moved for summary judgment on all of the Plaintiff's claims. [Doc. [10](#).] Although Plaintiff Shahid's response was due December 28, 2009, he has failed to file any response to date.

Once a defendant moving for summary judgment satisfies its initial burden of showing the absence of a genuine factual issue on an essential element of the plaintiff's claim, the burden shifts to the nonmoving plaintiff to set forth specific facts showing a triable issue. See [*Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 \(1986\)](#); [*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 \(1986\)](#). Under Rule 56, "[w]hen a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." [Fed. R. Civ. P. 56\(e\)\(2\)](#). Here, by failing to respond to the Defendant's summary judgment motion, the Plaintiff has failed to meet his burden of pointing to specific facts showing a genuine factual issue.

In any event, after conducting its own review of the record in the light most favorable to the Plaintiff, see [*Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 \(1970\)](#), the Court concludes that the Plaintiff's claims fail as a matter of law.

To establish negligence, a plaintiff must prove the existence of a duty, a breach of the duty,

Case No. 1:09-CV-1764
Gwin, J.

and an injury proximately resulting from that breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 693 N.E.2d 271, 274 (Ohio 1998). Moreover, “the existence of a duty in a negligence action is a question of law for the court to determine.” *Mussivand v. David*, 544 N.E.2d 265, 270 (Ohio 1989).

Although business owners have a duty to warn business invitees of some risks, they are under no duty to protect invitees from hazardous conditions that are open and obvious. *Sidle v. Humphrey*, 233 N.E.2d 589, 591 (Ohio 1968). Because the hazard is readily apparent to the reasonable invitee, “the owner . . . may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.” *Armstrong v. Best Buy Co., Inc.*, 788 N.E.2d 1088, 1089 (Ohio 2003). Thus, when applicable, the open-and-obvious doctrine obviates the owner’s duty to warn and acts as a complete bar to any negligence claims. *Id.* at 1090.

In this case, the open-and-obvious doctrine bars the Plaintiff’s negligence claims against the Defendant. Shahid, of his own volition, decided to climb into the drop-ceiling roof above the convenience store floor. [Doc. 10-2 at 3.] A reasonable person would have understood that a drop ceiling presents an open and obvious risk of injury to those who would climb into and onto it for support. Cf. *Prest v. Delta Delta Delta Sorority*, 686 N.E.2d 293 (Ohio Ct. App. 1996) (holding that edge of sorority house roof was open-and-obvious danger that reasonable person should discern); *Anderson v. Ruoff*, 654 N.E.2d 449 (Ohio Ct. App. 1995) (finding that unguarded edge of hayloft was open-and-obvious hazard); see also *Maras v. Goodyear Tire & Rubber Co.*, No. 69471, 1996 WL 273794 (Ohio Ct. App. 1996) (affirming summary judgment for defendant where plaintiff was injured “as a result of a conscious decision on his part to attempt to hang-drop from the roof down to the ground, despite the open and obvious nature of the dangers involved”).

Case No. 1:09-CV-1764
Gwin, J.

Thus, because the hazard in this case was open-and-obvious, the Defendant had no duty to warn Plaintiff Shahid of the potential for injury. Accordingly, the Plaintiff's negligence claims fail as a matter of law.^{1/}

For the foregoing reasons, the Court **GRANTS** the Defendant's motion for summary judgment.

IT IS SO ORDERED.

Dated: January 7, 2010

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{1/}For similar reasons, the doctrine of primary assumption of the risk would also bar the Plaintiff's negligence claims. See [Gallagher v. Cleveland Browns Football Co.](#), 659 N.E.2d 1232, 1236 (Ohio 1996) (noting that primary assumption of risk prevents plaintiff from establishing duty element of negligence claim and entitles defendant to judgment as a matter of law); see also [Siglow v. Smart](#), 539 N.E.2d 636, 640 (Ohio Ct. App. 1987) ("A plaintiff who reasonably chooses to proceed in the face of a know risk is deemed to have relieved defendant of any duty to protect him.")